

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

RECEIPT # 571580  
AMOUNT \$ 150  
SUMMONS ISSUED Y-9  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. PS  
DATE 7-14-04

ING LIFE INSURANCE AND ANNUITY  
COMPANY

Plaintiff,

v.

KUMBIRAI CHIWARA USHE,

FIDES PERDITA CHIRWA AS MOTHER  
AND NATURAL GUARDIAN OF  
KUMBIRAI USHE,

ZVIDZAI G. USHE,

DUMAZILE Z. USHE,

NTOMBIZODWA KUMALO-USHE  
(LAST SPOUSE OF SAMSON CHIWARA  
USHE), individually and as Administratrix  
of the ESTATE OF SAMSON CHIWARA  
USHE

Defendants.

CIVIL ACTION NO.

July 14, 2004

04-11571 GA

MAGISTRATE JUDGE Collings

**COMPLAINT FOR INTERPLEADER**

1. ING Life Insurance and Annuity Company ("ING"), by way of this Complaint, brings this interpleader action pursuant to Title 28 of Section 1335 of the United States Code.

**JURISDICTION AND VENUE**

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1335(a).
3. ING is a corporation having in its custody or possession money with value in excess of \$500.

4. Two or more than two persons of diverse citizenship as defined in 28 U.S.C. § 1332 may claim to be entitled to such money.
5. Submitted in conjunction with this Complaint is a petition for a court order allowing deposit of such money into the registry of this Court as per Fed.R.Civ.P. 67, Local Rule 67.2 of this Court, and 28 U.S.C. § 1335(a)(2). The petition further requests that, pursuant to 28 U.S.C. § 2361, process issue and that an order of restraint issue on all claimants.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1397, as at least one claimant resides within the District of Massachusetts.

### **PARTIES**

1. ING Life Insurance and Annuity Company ("ING") is a Connecticut corporation with a principal place of business in Atlanta, Georgia.
2. Samson Chiwara Ushe ("Samson Ushe"), before his death on July 16, 2003, was a resident of Holyoke, Massachusetts. He estate is presently in probate in the Hampden Probate Court.
3. Kumbirai Chiwara Ushe ("Kumbirai Ushe") is a child of Samson Ushe and resident of West Springfield, Massachusetts.
4. Zvidzai G. Ushe is a child of Samson Ushe and resident of Ypsilanti, Michigan.
5. Dumazile Z. Ushe is a child of Samson Ushe and a resident of Buffalo, N.Y.
6. Fides P. Ushe is the mother and natural guardian of Kumbirai Ushe, and is a resident of West Springfield, Massachusetts.
7. Ntombizodwa Kumalo-Ushe, the last spouse of Samson Ushe at the time of his death and the administratrix of his estate, is a resident of Massachusetts.

### **COUNT I** ***Interpleader***

8. On or about February 9, 1984, plaintiff ING issued Samson Ushe an annuity contract (the "Contract") bearing the account number G50000376 069447399, which represents Samson's participation in a contract issued as a funding vehicle for an Internal Revenue Code Section 403(b) plan sponsored by the NYSUT Benefit Trust known as the Opportunity Plus Program.


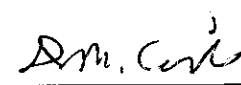
9. The Contract, as modified, lists defendants Kumbirai Ushe, Zvidzai Ushe and Dumazile Ushe as beneficiaries.
10. Upon information and belief, Sampson Ushe was married to Fides P. Ushe and defendant Kumbirai Ushe was the child of said marriage.
11. Upon information and belief, Samson Ushe and Fides P. Ushe were married until the Trial Court of the Commonwealth of Massachusetts entered a Judgment of Divorce Nisi on December 18, 2000 (the "Judgment").
12. Upon information and belief, Samson Ushe and Fides P. Ushe entered into a separation agreement ("Separation Agreement") that was incorporated into the Judgment. It is alleged that the Contract is referenced in said separation agreement.
13. Upon information and belief, Kumbirai Ushe alleges that the Separation Agreement between Samson Ushe and Fides P. Ushe provides that the death benefit due under the Contract is payable in full to Kumbirai Ushe.
14. Plaintiff has received death benefit claims from defendants Zvidzai G. Ushe and Dumazile Z. Ushe.
15. By reason of the conflicting claims of the defendants, and claims that may not have yet been made, plaintiff is in great doubt as to which, if any, of the defendants is entitled to be paid the amounts due under the Contract.

**WHEREFORE** plaintiff demands that the Court adjudge:

1. That none of the defendants is entitled to recover from plaintiff the amount of said Contract or any part thereof.
2. That each of the defendants be restrained from instituting any action against plaintiff for the recovery of said Contract or any part thereof.

3. That if the Court shall determine that any of the defendants are entitled to the proceeds of the Contract, the defendants be required to interplead and settle between themselves their rights to the sums due under the Contract, and that plaintiff be discharged from all liability in the premises except to the person whom the Court shall adjudge entitled to the amount of said Contract.
4. That plaintiff recover its costs, fees and disbursements in this action.

PLAINTIFF, ING LIFE INS. & ANNUITY CO.

By    
Robert L. Ciociola BBO# 084140  
Gabriel D. M. Ciociola BBO# 636072  
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Its Attorneys

## CIVIL COVER SHEET

JS 44 (Rev. 3/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ING Life Insurance and Annuity Co.

(b) County of Residence of First Listed Plaintiff Fulton  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)  
Gabriel D. M. CiociolaLitchfield Cavo6 Kimball Lane, Suite 100Lynnfield, MA 01940(781) 309-1500

## II. BASIS OF JURISDICTION

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## DEFENDANTS

Kumbirai Chiwara Ushe, et al.County of Residence of First Listed Defendant Hampden  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)  
(See attachment)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- Citizen of This State ☒ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☒ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

- CONTRACT**
- ☐ 110 Insurance  
☐ 120 Marine  
☐ 130 Miller Act  
☐ 140 Negotiable Instrument  
☐ 150 Recovery of Overpayment & Enforcement of  
☐ 160 Recovery of Defaulted Student Loans (Excl. Veterans)  
☐ 153 Recovery of Overpayment of Veteran's Benefits  
☐ 160 Stockholders' Suits  
☐ 190 Other Contract  
☐ 195 Contract Product Liability

- PERSONAL INJURY**
- ☐ 310 Airplane  
☐ 315 Airplane Product Liability  
☐ 320 Assault, Libel & Slander  
☐ 330 Federal Employers' Liability  
☐ 340 Marine  
☐ 345 Marine Product Liability  
☐ 350 Motor Vehicle  
☐ 355 Motor Vehicle Product Liability  
☐ 360 Other Personal Injury

- PERSONAL INJURY**
- ☐ 362 Personal Injury—Med. Malpractice  
☐ 365 Personal Injury—Product Liability  
☐ 368 Asbestos Personal Injury Product Liability
- PERSONAL PROPERTY**
- ☐ 370 Other Fraud  
☐ 371 Truth in Lending  
☐ 380 Other Personal Property Damage  
☐ 385 Property Damage Product Liability

## REAL PROPERTY

- ☐ 210 Land Condemnation  
☐ 220 Foreclosure  
☐ 230 Rent Lease & Ejectment  
☐ 240 Torts to Land  
☐ 245 Tort Product Liability  
☐ 290 All Other Real Property

## CIVIL RIGHTS

- ☐ 441 Voting  
☐ 442 Employment  
☐ 443 Housing/Accommodations  
☐ 444 Welfare  
☐ 440 Other Civil Rights

## PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence  
☐ 530 General Habeas Corpus  
☐ 535 Death Penalty  
☐ 540 Mandamus & Other  
☐ 550 Civil Rights  
☐ 555 Prison Condition

## FORFEITURE/PENALTY

- ☐ 610 Agriculture  
☐ 620 Other Food & Drug  
☐ 625 Drug Related Seizure of Property 21 USC  
☐ 630 Liquor Laws  
☐ 640 R.R. & Truck  
☐ 650 Airline Regs.  
☐ 660 Occupational Safety/Health  
☐ 690 Other

## BANKRUPTCY

- ☐ 422 Appeal 28 USC 158  
☐ 423 Withdrawal 28 USC 157

## PROPERTY RIGHTS

- ☐ 820 Copyrights  
☐ 830 Patent  
☐ 840 Trademark

## LABOR

- ☐ 710 Fair Labor Standards Act  
☐ 720 Labor/Mgmt. Relations  
☐ 730 Labor/Mgmt. Reporting & Disclosure Act  
☐ 740 Railway Labor Act  
☐ 790 Other Labor Litigation  
☐ 791 Empl. Ret. Inc. Security Act

## SOCIAL SECURITY

- ☐ 861 HIA (1395ff)  
☐ 862 Black Lung (923)  
☐ 863 DIW C/DIW W (405(g))  
☐ 864 SSD Title XVI  
☐ 865 RS1 (405(g))

## FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)  
☐ 871 IRS—Third Party 26 USC 7609

## OTHER STATUTES

- ☐ 400 State Reapportionment  
☐ 410 Antitrust  
☐ 430 Banks and Banking  
☐ 450 Commerce/ICC Rates/etc.  
☐ 460 Deportation  
☐ 470 Racketeer Influenced and Corrupt Organizations  
☐ 810 Selective Service  
☐ 850 Securities/Commodities/Exchange  
☐ 875 Customer Challenge 12 USC 3410  
☐ 891 Agricultural Acts  
☐ 892 Economic Stabilization Act  
☐ 893 Environmental Matters  
☐ 894 Energy Allocation Act  
☐ 895 Freedom of Information Act  
☐ 900 Appeal of Federal Determination Equal Access to Justice  
☐ 950 Constitutionality of State Statutes  
☒ 890 Other Statutory Actions

## V. ORIGIN

- ☐ 1 Original Proceeding  
☐ 2 Removed from State Court

- ☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened

Transferred from another district (specify)

- ☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

28 USC §1335 Interpleader

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

SIGNATURE OF ATTORNEY OF RECORD

DOCKET NUMBER

DATE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) ING Life Insurance and Annuity Co. v. Kumbirai Chiwara Ushe, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.

☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐ V. 150, 152, 153.

\*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court? YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403) YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284? YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☒

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions) YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Gabriel D. M. Ciociola (of Litchfield Cavo)

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